

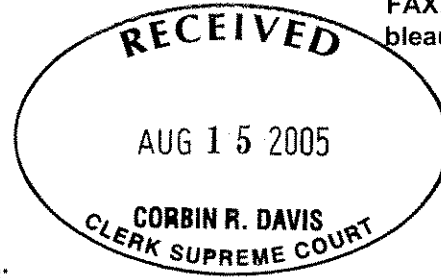


74TH JUDICIAL DISTRICT COURT

1230 Washington Avenue
P.O. Box 10
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THOMAS J. BLEAU
MAGISTRATE

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August 12, 2005

Re: ADM File No. 2005-16

Dear Chief Justice Taylor and Associate Justices;

I am writing on behalf of the Michigan Association of District Court Magistrates. Our association represents magistrates throughout the state. Our members deal with informal hearings on civil infractions on a daily basis. By resolution passed unanimously by our board of directors, we request this Honorable Court to reject proposed court rule MCR 4.101.

The proposed rule will have three major detrimental effects on the system of justice in this state:

- 1) It will harm the credibility of the courts and the judicial system in general;
- 2) It will treat defendants unfairly; and
- 3) It will interfere with the efficient operation of the courts.

For many citizens, their only contact with our court system is their experience in District Court. As this Court is aware, the majority of these cases involve civil infractions. The people who contest traffic tickets are ordinary citizens who are not familiar with legal proceedings, and do not have attorneys to educate them about the consequences of waiving their rights. They merely want someone neutral to listen to them and understand their side of the story. They will accept a negative verdict but only if they believe they have been heard and have had an opportunity to have their questions answered. Under the proposed rule this will not occur.

Under this new rule, if the driver waives the police officer's presence, the hearing will consist of the live testimony (under oath) of the citizen versus the hearsay statement of the officer. If the officer's letter has established the elements of the offense, the court will, it is presumed, find the driver responsible. There is no explanation of the ticket beyond the pro forma statements in the letter, no opportunity for the citizen, or the magistrate, to ask questions or obtain clarifications, no possibility for the citizen, or the magistrate, to see the credibility of the officer in a neutral setting. Instead, the magistrate reads a piece of paper and the citizen gets a fine, an insurance increase, and perhaps additional fees or a suspension from the Secretary of State.

The average citizen will not believe justice has been served. Instead they will believe that their side doesn't matter, and the court exists merely to rubber stamp tickets and collect money. Since this is the only court process most ordinary citizens see, their view of the system will be tainted by their experience. This negative impression will carry over to the whole judicial system. With the respect for the courts currently being

questioned, it would seem extremely imprudent to needlessly institute a process that makes the ordinary citizen doubt the fundamental fairness of this institution we all cherish.

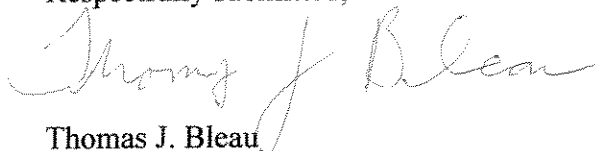
The rule is also unfair inasmuch as it does not treat defendants and officers similarly. Often the defendant is not a resident of the community and must travel upwards of a hundred miles to personally appear and present his/her case to the court. The officer who is a member of the community and whose job it is to enforce the law, including appearing in court, is permitted to simply write a letter. If this Court wishes to allow disputes to be resolved by letter, then both the defendant and the officer should be given the option of presenting their case by letter without the need of personal appearance. Either both need to appear or neither need appear.

Finally, the court rule will interfere with the efficient operation of the courts by increasing staff time, and increasing court expenses. First of all, the court clerks will have to explain to the defendants the new procedure trying to make sure that the defendants clearly understand the rights they are waiving. Next, the clerks will set the first hearing without the officer and mail notices to both sides. When the letter from the officer comes in, it will have to be tracked, the file pulled, and the letter filed. Then, if the defendant changes his or her mind and wants to have the officer present, the court will be required to adjourn the hearing, reschedule the matter and mail out new notices. Although this extra explanation, sorting, filing and mailing may not seem burdensome in dealing with one single case, the repetition of this procedure for courts that are processing hundreds or even thousands of cases each year will have a significant impact. Moreover, this procedure will gut the new case load management standards in Administrative Order 2003-7. After factoring in the time the defendant has to answer the ticket and the time necessary for the court to schedule a regular hearing, it will be impossible to reschedule the second hearing within thirty-five days.

Magistrates are aware that the proposed court rule is voluntary, not mandatory. However, once the procedure is allowed, the pressure on the courts from state and local police commanders to adopt a procedure that they feel will reduce their expenses will be enormous. This procedure, first envisioned as a limited response to a local initiative, will be transformed into the norm. This will be bad for the judicial system as a whole, the individual court's bottom line, and the defendants who expect a fair and efficient hearing of their cases.

Therefore, the Michigan Association of District Court Magistrates respectfully requests that this Honorable Court reject proposed court rule MCR 4.101.

Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas J. Bleau". The signature is written in dark ink and is positioned above the printed name and title.

Thomas J. Bleau
President, Michigan Association of District Court Magistrates